

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

United States of America,)	
)	
Plaintiff,)	
)	
vs.)	File No. 1:17-cr-170
)	
Kevin D. Wanner,)	
)	
Defendant.)	

TRANSCRIPT OF CHANGE OF PLEA

Taken at
United States Courthouse
Bismarck, North Dakota
March 13, 2018

BEFORE THE HONORABLE DANIEL L. HOVLAND
-- UNITED STATES DISTRICT COURT JUDGE --

APPEARANCES

MR. NICHOLAS W. CHASE
U.S. Attorney's Office
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FOR THE UNITED STATES

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FOR THE DEFENDANT

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Certificate of Court Reporter - Page 33

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1 (The above-entitled matter came before the Court, The
2 Honorable Daniel L. Hovland, United States District Court
3 Judge, presiding, commencing at 11:02 a.m., Tuesday, March 13,
4 2018, in the United States Courthouse, Bismarck, North Dakota.
5 The following proceedings were had and made of record in open
6 court with the defendant present.)

7 - - - - -

8 THE COURT: We'll open the record in the case of
9 United States of America versus Kevin Wanner. Here on behalf
10 of the federal government is Assistant U.S. Attorney Nick
11 Chase. Representing the defendant here is Attorney Jeff Weikum
12 from Bismarck. And, Mr. Wanner, how are you today?

11:02

13 THE DEFENDANT: Good.

14 THE COURT: This is scheduled as a change of plea
15 hearing on counts of mail fraud and money laundering. There
16 was a written Plea Agreement filed by the parties on
17 December 5, 2017, along with a Plea Agreement Supplement.
18 Mr. Chase, if you could just briefly summarize here on the
19 record what the parties have essentially agreed upon and what's
20 contemplated under the advisory sentencing guidelines from that
21 Plea Agreement.

11:02

22 MR. CHASE: Your Honor, the parties have really -- in
23 the Plea Agreement have only agreed on the base offense level.
24 I'm not sure how much of a disagreement we have on the others.

11:02

25 But in paragraph 14 of the Plea Agreement, as the

11:03

11:03

11:03

11:04

11:04

11:04

1 Court can note, that we have listed a number of enhancements
2 that the United States seeks to prove at the time of
3 sentencing, included 18 levels because the loss amount is
4 between 2.5 million, but less than 7 million; a plus-six
5 because the crime resulted in substantial hardship to more than
6 25 victims; a plus-two because it was committed using
7 sophisticated means; another plus-two because the defendant
8 abused a position of trust; another plus-one because of the
9 money laundering conviction on top of the fraud conviction; and
10 a plus-two because the defendant knew one of the victims was a
11 vulnerable victim.

12 We don't have an agreement on any of those
13 enhancements, Your Honor, but, you know, obviously those
14 enhancements, you know, put the -- put the advisory sentencing
15 range in the double digits in terms of years.

16 At the time of sentencing, we also have to resolve
17 the issue of restitution and forfeiture.

18 THE COURT: Well, if there's going to be a need for a
19 hearing and for me to make some factual findings as to the
20 sentencing guidelines, then I'll likely want to schedule that
21 before any date of a sentencing hearing rather than on the date
22 of. But I will certainly need to know numbers and names of
23 witnesses that will be called to address those sentencing
24 guideline issues. But what do you anticipate today in terms of
25 the number of witnesses that you would need to call to --

1 relative to these sentencing guideline disputes?

2 MR. CHASE: I would think that -- I think that for my
3 purposes -- I'm sorry. Proving the sentencing guidelines, I
4 can likely do it, you know, most of it, if not all of it with
5 Mr. Mathias from the North Dakota Securities Department, with
6 maybe one or two of the victims testifying. I would expect,
7 you know, at some point, Your Honor, that a number of these
8 victims want to be heard in this case, so -- but if you're
9 talking strictly --

10 THE COURT: Well, they'd be -- they're entitled to
11 that at the time of the sentencing hearing.

12 MR. CHASE: Right, but in terms of just calculating
13 the guidelines, I would say one to three witnesses, Your Honor.

14 THE COURT: All right. And, Mr. Weikum, anything you
15 wish to add to that summary?

16 MR. WEIKUM: No, I believe that accurately reflects
17 it, and it's going to -- and I agree with the Court that
18 probably having an earlier hearing may clear up some of the
19 items and expedite the initial sentencing --

20 THE COURT: Right.

21 MR. WEIKUM: -- when it happens.

22 THE COURT: But how many witnesses would you envision
23 that you'd call?

24 MR. WEIKUM: It is going to be, I would guess, the
25 same number, but depending on who they're calling, once I have

1 the identification of which ones out of that, I can probably
2 get that down, but I'm guessing it probably in that two to five
3 range, not -- again, none of them being lengthy, but --

11:06 4 THE COURT: All right. Well, I would likely look at
5 scheduling that probably a good month before the sentencing
6 hearing. And my office will reach out to both of you and try
7 to find a date and time that works and try to figure out
8 precisely how much time is needed so they can block that out of
9 my schedule.

11:06 10 So, Mr. Wanner, I need to visit with you here on the
11 record today about your intent to plead guilty to these two
12 charges. Most of what I need to visit with you about are
13 matters that have been addressed in the Plea Agreement, but the
14 law requires we have a hearing in open court and I cover a
11:06 15 number of matters with you.

16 If you have any questions as we go through the Plea
17 Agreement this morning, you're free to interrupt me and ask
18 questions.

19 THE DEFENDANT: No questions.

11:07 20 THE COURT: I don't know anything about you, or --
21 what I know about this case is what's set forth in the Plea
22 Agreement. As a judge, I have not seen any of the discovery or
23 the evidence, so I'll need to ask you some questions about what
24 was all going on here as well.

11:07 25 But in terms of your background, can you tell me just

1 a little bit about yourself, how old you are and where you've
2 grown up, gone to school, what your family consists of?

3 THE DEFENDANT: I was born in 1962 in Dickinson, went
4 to Dickinson Trinity, also attended University of North Dakota.
5 I started in the brokerage industry in 19 -- I believe 1985.

6 I have a wife, Deb, who's a teacher for about a
7 little over 25 years. I have a daughter, Ashley, who's
8 graduating from college. She's going into teaching. She's 22.
9 I have a son that's 20 that attends the University of North
10 Dakota. And I have a daughter that's 18 that goes to St.
11 Mary's. She's a senior.

12 THE COURT: And you live in Bismarck now?

13 THE DEFENDANT: I live in Bismarck, yes, I do.

14 THE COURT: Okay. And in the courtroom is your wife?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay. And your degree from UND was in
17 accounting, or --

18 THE DEFENDANT: I did business administration --

19 THE COURT: Okay.

20 THE DEFENDANT: -- management. I have some
21 accounting in there too. I went and took some accounting
22 courses too.

23 THE COURT: Any prior criminal history?

24 THE DEFENDANT: No.

25 THE COURT: Any prior issues in your life related to

1 the abuse of alcohol or street drugs?

2 THE DEFENDANT: No.

3 THE COURT: Ever received any treatment for use of
4 alcohol, street drugs or mental health treatment of any sort?

11:08

5 THE DEFENDANT: No.

6 THE COURT: Are you on any --

7 THE DEFENDANT: well, I'm sorry, the gambling part of
8 it, I'm getting treatment for gambling.

9 THE COURT: Okay.

11:09

10 THE DEFENDANT: I have since -- since January
11 of 2016.

12 THE COURT: Okay.

13 THE DEFENDANT: I'm treating for gambling right now.
14 It's been going on for three years, ever since --

11:09

15 THE COURT: And that's been an issue in your life
16 for --

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. And that's intertwined with these
19 criminal offenses, I assume?

11:09

20 THE DEFENDANT: Yes.

21 THE COURT: And, Mr. Weikum, are you retained or
22 appointed in this case, or --

23 MR. WEIKUM: I'm retained.

11:09

24 THE COURT: Okay. And, Mr. Wanner, do you feel
25 you've had sufficient time to review this case and this charge

1 with your attorney, Mr. Weikum?

2 THE DEFENDANT: Yes.

3 THE COURT: And with respect to the Plea Agreement,
4 do you feel that you had sufficient time to review that with
5 him as well?

11:09

6 THE DEFENDANT: Yes.

7 THE COURT: Did you read the Plea Agreement before
8 you signed it?

9 THE DEFENDANT: Yes.

11:09

10 THE COURT: And you're certainly able to read and
11 understand English well, correct?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. So in terms of your work in
14 North Dakota since you got out of college, what has that
15 consisted of?

11:10

16 THE DEFENDANT: Mainly through different brokerage
17 firms.

18 THE COURT: In Bismarck primarily?

19 THE DEFENDANT: In Dickinson and Mandan-Bismarck,
20 yeah.

11:10

21 THE COURT: And which firms in Bismarck have you
22 worked for?

23 THE DEFENDANT: Edward Jones, A.G. Edwards. Well,
24 now I work for -- I have my own business, Precision Financial,
25 which my broker dealer was Woodbury and Questar.

11:10

1 THE COURT: So do you have your Series 7 license and
2 all those other series licenses?

3 THE DEFENDANT: Series 7, 65, yeah, all the ones that
4 -- I can sell stocks and bonds, insurance license.

11:10

5 THE COURT: All right. Are you employed now, or you
6 just have your own business now, or what are you doing for
7 work?

8 THE DEFENDANT: I'm working at Menards right now.

9 THE COURT: Pardon?

11:11

10 THE DEFENDANT: I'm working at Menards, night --

11 THE COURT: Okay.

12 THE DEFENDANT: -- duty. I've been battling some
13 health issues, so I was doing -- battling my health during the
14 day and working at night.

11:11

15 THE COURT: And what are the health issues?

16 THE DEFENDANT: I have what's called ITP. It's a
17 blood disorder. I have it under control now, but -- so it
18 worked better -- it worked for me better doing it at -- working
19 at night and trying to do my treatments during the day.

11:11

20 THE COURT: So let's review the Plea Agreement here.
21 Do you have a copy there in front of you that you could refer
22 to?

23 THE DEFENDANT: (Nodding.)

11:11

24 THE COURT: Turning to the last page, which is page
25 12, is that your signature on the Plea Agreement?

1 THE DEFENDANT: Yes, it is.

2 THE COURT: And I guess I forgot to ask you, but are
3 you on some form of pretrial supervision now, reporting to a
4 probation officer?

11:11

5 THE DEFENDANT: No.

6 MR. WEIKUM: No, he's just on PR release.

11:12

7 THE COURT: Okay. Paragraph -- if you could turn to
8 paragraph 7, which outlines the maximum penalties for this
9 offense -- these offenses, I should say, Count 1 is a count of
10 mail fraud. It carries a maximum of 20 years in federal
11 prison, \$250,000 fine, 5 years of supervised release, and a
12 \$100 special assessment.

11:12

13 Count 2 is a crime entitled money laundering, which
14 carries a 10-year statutory maximum sentence, a maximum fine of
15 \$250,000, 3 years of supervision, and again a \$100 special
16 assessment. Do you have any questions about what the maximum
17 penalties are for these two crimes?

18 THE DEFENDANT: No.

11:12

19 THE COURT: And in addition to these penalties, I
20 have the discretion in a criminal case of this nature to order
21 you to pay what's quality restitution for the losses incurred,
22 and you're -- and you understand that you may likely be
23 responsible for paying some amount of restitution too?

24 THE DEFENDANT: Yes.

11:13

25 THE COURT: Okay. Paragraph 8 summarizes what your

1 rights are as a defendant. Every defendant charged with a
2 crime in federal court has a right to a jury trial. That means
3 that you don't have to plead guilty. If you wished to contest
4 this charge, you have the absolute right to do that.

11:13

5 And if you chose to contest it, then we would have a
6 trial in this courtroom in front of 12 jurors. They would
7 listen to the evidence, and they would decide whether you're
8 guilty or not guilty of the elements of these two crimes. Do
9 you understand that you're entitled to a jury trial?

11:13

10 THE DEFENDANT: Yes.

11 THE COURT: And when cases proceed to trial in
12 federal court, the government, namely Mr. Chase, always has the
13 burden of proof. It's the prosecutor who has the burden of
14 presenting evidence and calling witnesses to prove up these
15 charges. As a defendant you are presumed to be innocent, so
16 under our Constitution, that means that you don't have to prove
17 or disprove anything.

11:13

18 Any evidence and witnesses that the government would
19 call to testify at trial could be challenged and cross-examined
20 by your attorney, but as a defendant you also have a right to
21 present a case and to present a defense. You, just like the
22 government, have a right to call witnesses, and you have a
23 right to testify.

11:14

24 But you also have a right to remain silent, which
25 essentially means that you can proceed to trial and choose not

11:14

1 to testify. Nobody could ever put you on the stand and
2 question you about what went on here unless you allowed that to
3 occur. And frequently in criminal cases, defendants choose not
4 to testify for a multitude of reasons, but do you understand
5 all of that?

11:14

6 THE DEFENDANT: Yes.

7 THE COURT: And if this case proceeded to a trial and
8 you were ultimately found guilty of either of these charges by
9 the jury, you have certain rights as well. You've got a right
10 to appeal any adverse decision of the jury, and you have a
11 right to appeal any sentence that you would be ordered to serve
12 if you were found guilty at a trial.

11:14

13 In the federal criminal justice system, year after
14 year the statistics don't change much. They reveal that
15 generally 95 to 97 percent of criminal cases are resolved by
16 defendants pleading guilty and signing plea agreements, so it's
17 just a small percentage of cases that -- criminal cases that go
18 to trial, but we certainly try a lot of cases in this district.

11:15

19 But you've made the conscious decision that you
20 intend to plead guilty to these two charges, is that correct?

11:15

21 THE DEFENDANT: Yes.

22 THE COURT: Do you feel that anyone has in some way
23 forced you or threatened you or intimidated you or coerced you
24 to come in here this morning to plead guilty?

11:15

25 THE DEFENDANT: No.

1 THE COURT: Have you been promised anything in
2 exchange for pleading guilty other than what's contained in the
3 Plea Agreement?

4 THE DEFENDANT: No.

11:16

5 THE COURT: All right. Then let's talk about the
6 sentencing guidelines, and they're first addressed in paragraph
7 13. Sentencing in the federal criminal justice system is
8 largely controlled by the federal sentencing guidelines. They
9 are contained in this manual that I'm holding up.

11:16

10 The sentencing guidelines have been in existence in
11 the federal criminal justice system since 1987, 30 years. The
12 sentencing guidelines used to be mandatory, but about 10 or
13 12 years ago that changed, and the United States Supreme Court
14 has now said that the guidelines are no longer mandatory.

11:16

15 They're considered to be advisory. That simply means that we,
16 as judges, have more discretion in sentencing than what we used
17 to have.

11:17

18 But it's crystal clear under the law that before any
19 defendant is sentenced in federal court, myself, as the
20 sentencing judge, am required to determine what the sentencing
21 guideline range is, so we have to consult this manual. And
22 both of these attorneys are well versed and as knowledgeable
23 about the sentencing guidelines manual as any -- as any other
24 attorney or judge.

11:17

25 But we really look at two primary factors to

11:17

1 determine the sentencing guideline range. One is your criminal
2 history. There are just six separate criminal history
3 categories recognized in this manual, and VI is the worst. You
4 don't have a criminal history, so you're going to end up in
5 Criminal History Category I.

11:18

6 The other factor that we need to determine is the
7 base offense level for a crime. Every crime in the federal
8 system, of which there are thousands, has a certain number
9 that's associated with it. It's known as the base offense
10 level for that crime. Paragraph 7 tells us that the parties
11 have agreed on that as being a seven. That's in paragraph 13.
12 Do you see that?

13 THE DEFENDANT: Yes.

11:18

14 THE COURT: Now, with most crimes there's upward
15 adjustments to that number, whether it's a drug offense or a
16 violent crime or a white-collar crime such as this, and the
17 parties have not agreed on those adjustments.

11:18

18 The United States, in paragraph 14, is going to
19 contend that the following adjustments apply, a plus-18.
20 That's 18 added onto the 7 because they contend the loss amount
21 was more than 2.5 million, but less than 7 million, so I will
22 have to make a factual finding based on the evidence that I'm
23 presented with at this hearing we mentioned earlier as to what
24 the total amount of the loss was.

11:19

25 There's a six-level upward adjustment that the

11:19

1 government is going to argue applies because the crime resulted
2 in substantial financial hardship to more than 25 victims.
3 Again, that's going to have to be addressed. I'm going to have
4 to make a finding on that based on evidence that's presented to
5 me by both attorneys.

11:19

6 If the crime was -- if there was some sort of
7 sophisticated means that were used to commit this crime, that
8 would trigger another plus-two upward adjustment. There's
9 another plus-two upward adjustment if there was abuse of a
10 position of trust, a plus-one adjustment if there was money
11 laundering involved, and another plus-two upward adjustment if
12 there were vulnerable victims or you knew that one of the
13 victims was a vulnerable victim, so all of those are going to
14 be on the table.

11:19

15 And I want to hold a hearing on that subject at least
16 a month before the sentencing hearing so by the time we get to
17 the sentencing hearing, I will have made a written finding and
18 everybody knows what I have determined to be the applicable
19 sentencing guidelines. Do you follow me?

11:20

20 THE DEFENDANT: Yes.

11:20

21 THE COURT: Okay. I always encourage the parties to
22 try to agree on what they can agree, and if they disagree on
23 certain upward adjustments on the guideline, then we'll have a
24 hearing, and I'll listen to witnesses, and I do that
25 frequently. But if there's some of these adjustments that both

1 parties can agree apply, I would urge you to try to work that
2 out between yourselves.

3 And then paragraph 15 tells us that there will be a
4 three-level or a three-point downward adjustment for your
5 acceptance of responsibility and signing a Plea Agreement and
6 pleading guilty.

7 So at the end of the day, after I've heard evidence,
8 I'm going to have to make some factual findings, and I will
9 ultimately have to decide what the guideline range is, what the
10 total offense level is, all of these numbers added up, and what
11 your criminal history category is.

12 If all of these upward adjustments apply, then when
13 you add all of those up as the government contends apply, then
14 we're up to, according to my math, an offense level of 35 and a
15 Criminal History Category I. And you turn to a sentencing
16 table in the back of this manual, and it tells you what the
17 guideline range is. Have you seen this chart before?

18 THE DEFENDANT: Yes.

19 THE COURT: If you're -- if all of these upward
20 adjustments apply, then we're looking at an advisory sentencing
21 guideline range, if my math is correct, of 168 to 210 months,
22 but it's all -- I mean, the most significant upward adjustment
23 in these types of cases is the total amount of the loss, and so
24 I'm sure that will probably be the critical issue.

25 But, Mr. Weikum, do you have a number that you have

1 determined is more likely than not to be that actual amount of
2 loss?

3 MR. WEIKUM: We're still working on that number given
4 kind of the math that was being used both -- by the
5 investigating authorities as well, and so it's a -- it's a
6 floating number, unfortunately, that floats fairly
7 significantly.

8 THE COURT: All right. Now, in addition to the
9 sentencing guidelines, before any defendant is sentenced in
10 federal court, there's some other sentencing factors that I'm
11 required to consider. Those are all spelled in a -- spelled
12 out in a statute, a federal law. The citation to the law is 18
13 United States Code, Section 3553(a). That law, that statute
14 identifies eight or nine other factors that I'm required to
15 consider.

16 And Mr. weikum can make you a copy of that law. You
17 can look it up on the Internet if you wish. Just Google in 18
18 United States Code, Section 3553(a), and it will print out a
19 statute that lists certain factors, such things as your history
20 and characteristics and the nature of this offense, looking at
21 the offense in its entirety, looking at -- I'm required to look
22 at the need to structure a sentence that's going to deter
23 further criminal misconduct and protect the public and ensure
24 that you receive a sentence that's going to give you an
25 opportunity for treatment and training. And most of them are

1 common sense characteristics that really every judge should be
2 looking at before they sentence anybody.

3 And when we get to the sentencing hearing, both
4 attorneys have an opportunity to recommend what they believe is
11:24 5 the appropriate sentence based on the sentencing guidelines and
6 these sentencing factors under 18 USC Section 3553(a). I'm
7 required to listen to what the attorneys present and recommend,
8 but I don't have to adopt and rubber-stamp what any of them
9 say. Do you understand?

11:24 10 THE DEFENDANT: Yes.

11 THE COURT: Okay. And at a sentencing hearing, both
12 sides can present witnesses. The victims are entitled to
13 testify. You can certainly call witnesses -- character-type
14 witnesses.

11:24 15 You're entitled to submit written materials before
16 the hearing such as letters of support from people that know
17 you well and can speak of your character. And so both sides
18 can call witnesses and present any written materials that they
19 wish to support their recommendation for a sentence.

11:25 20 The statistical data from the United States
21 Sentencing Commission reveals that the majority of sentences
22 that people receive in federal court tend to be sentences that
23 fall within the sentencing guideline range that applies. But
24 any questions about sentencing issues?

11:25 25 THE DEFENDANT: No.

1 THE COURT: All right. Then if you could turn next
2 to paragraph 22, it's entitled Defendant's Waiver of Appeal.
3 It's an important paragraph. It covers the bottom of page 9,
4 all of page 10, and half of page 11. And waiver of appeal
5 simply means giving up your right of appeal. These types of
6 paragraphs are commonly inserted in plea agreements. In fact,
7 most plea agreements contain a waiver of appeal paragraph.

8 The Courts of Appeals that oversee everything that
9 goes on in a district courtroom like this have nationwide said
10 that it's permissible to include a waiver of appeal paragraph
11 in a Plea Agreement, so it's done all the time. It's made a
12 part of the Plea Agreement in an effort to try to put an end to
13 these cases so that we don't have defendants coming back and
14 trying to reopen cases and challenge what has gone on.

15 And the Courts of Appeals enforce these waiver of
16 appeal paragraphs against defendants who turn around and appeal
17 after they've been sentenced. The Courts of Appeals nationwide
18 have all said that plea agreements are considered to be
19 contracts, and if you, as a defendant, sign a Plea Agreement,
20 you have entered into a contract with the federal government,
21 and you're going to be held to its terms just like any other
22 contract that one would sign in life, so in that regard, it's
23 an important paragraph.

24 Paragraph 22 contains a lot of fancy lawyer-like
25 language and cites to cases and federal laws, but here's

1 basically what it means. This paragraph requires that before
2 you are sentenced, I need to determine what the applicable
3 sentencing guideline range is.

4 Then the paragraph goes on to say that as long as I
5 sentence you anywhere within that sentencing guideline range
6 that's found to apply or anywhere below it, you have agreed
7 that you will not turn around and appeal or challenge the
8 sentence in any way. In other words, you have essentially
9 agreed that you will live with the sentence that you're ordered
10 to serve in this case. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: I've been on the Bench since 2002. I
13 have never had a defendant that's been successful who's turned
14 around and appealed one of my sentences because generally
15 they're sentenced in accordance with plea agreements, and --
16 and more often than not, every time a defendant signs a Plea
17 Agreement, they're generally sentenced in accordance with the
18 terms of that agreement.

19 This paragraph says that if I ever chose to sentence
20 you above the sentencing guidelines, you could always appeal
21 that, but that's rarely done in this country. In fact, it
22 happens less than 1 percent of all cases. And if I ever choose
23 to sentence a defendant above the guidelines, I need to give
24 them advanced notice of that, but I'm not going to be
25 sentencing you above any sentencing guidelines in this case.

1 This paragraph also says that you do not give up any
2 claim that you may have against your attorney if you feel that
3 your attorney has not properly represented you throughout this
4 case. No defendant can be forced to give up a claim against
5 his or her attorney in a Plea Agreement like this, but do you
6 have any criticisms of the legal assistance and advice that
7 you've received from Mr. Weikum in this case?

8 THE DEFENDANT: No.

9 THE COURT: All right. And you retained him,
10 correct?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. Finally, let's turn to
13 paragraph 6, which is a rather lengthy paragraph found on pages
14 2, 3 and 4. Paragraph 6 provides a brief summary of what went
15 on here and explains why you were charged with these crimes in
16 federal court.

17 Before I can accept a plea of guilty from any
18 defendant, I need to make sure that there are sufficient facts
19 that are contained in the record that would support finding
20 that defendant guilty of what they've been charged with, so
21 most plea agreements do contain a summary of what occurred in
22 this case, explaining why these charges were brought against
23 you.

24 When you signed the Plea Agreement, you have
25 acknowledged that you've read it and understand it and you

1 agree with what's contained in it. I simply want to know
2 whether the factual information contained in paragraph 6 of the
3 Plea Agreement as it relates to these two charges and your
4 conduct is a true and accurate, factual summary.

11:30

5 THE DEFENDANT: Yes.

6 THE COURT: Are there any factual statements
7 contained in paragraph 6 of the Plea Agreement that you
8 disagree with?

9 THE DEFENDANT: No.

11:31

10 THE COURT: Pardon?

11 THE DEFENDANT: No.

12 THE COURT: All right. And all of this is
13 attributable to your gambling problems?

14 THE DEFENDANT: Yes.

11:31

15 THE COURT: So tell me how it all came crashing down.
16 How was it all discovered? When did the investigation start,
17 at least from your awareness of that investigation and when the
18 arrests were made?

11:31

19 THE DEFENDANT: I believe it was December 4th of 2015
20 that they arrived at my home and broke down my door and came in
21 and started investigating. And also at the same time they, I
22 guess, went to my office and recovered all my records and --

23 THE COURT: So there were search warrants and --

24 THE DEFENDANT: Yes.

11:32

25 THE COURT: All the computers and documents were

1 seized, I assume.

2 THE DEFENDANT: Right. They have all my documents
3 and computers and phones and iPads and whatever, yeah.

4 THE COURT: Okay. And you've had an opportunity to
5 review the discovery and the investigation and the
6 investigative reports that have been generated?

7 THE DEFENDANT: Yes. Yes.

8 THE COURT: In terms of a factual basis for the plea,
9 Mr. Chase, is there anything more that you feel that you need
10 to add to the record other than what's contained in paragraph
11 6?

12 MR. CHASE: No, Your Honor. I think that paragraph 6
13 at least lays out the basis -- the factual basis for both mail
14 fraud and the money laundering. You know, obviously we have
15 just laid out a few of the mailings to some of the victims.
16 M.B. and C.B., for example, are Mike and Connie Boone. The
17 T.S. and L.S. that were identified as victims are Terry and
18 Lori Schaaf. They are just four of many more victims in this
19 case, Your Honor. They're -- what is charged is, you know,
20 just to hit the elements of the statute, but the scheme is --
21 is much larger.

22 THE COURT: And what was the scheme essentially from
23 the government's perspective?

24 MR. CHASE: Your Honor, as we have alleged in the
25 Indictment and I believe during interviews and in court today,

1 Mr. Wanner has acknowledged, Mr. Wanner had a financial
2 business, Precision Financial Services in the Bismarck area.

3 At some point around 2000, created what he called an
4 investment club. It was the Bears and Bulls Investment Club,
11:34 5 the BBIC. With this club he solicited existing legitimate
6 clients in his financial services business to be part of a
7 special investment club. He created letterhead, you know, sort
8 of different information on businesses. He had a number of
9 these investment clients who he had in some cases a familial
11:34 10 relationship; in other cases, a longstanding business
11 relationship with. Sold what was purportedly CDs, fixed-income
12 bonds and stocks as part of this investment club.

13 They were all sham investments. They didn't exist at
14 all. The defendant had created, again, the solicitation
11:35 15 letters, the cover sheets, the account statements of where
16 their money was invested and what kind of return it was, what
17 their current balance was on the -- on the principal, tax
18 documents and account summaries. All of those documents,
19 again, completely fictitious that were created by Mr. Wanner to
11:35 20 continue the fraud.

21 Some of the monies that were paid in by investors
22 were churned within the investment club as people wanted to
23 withdraw money. Some of that money was used to pay off some of
24 the investors who were withdrawing money. The vast majority of
11:36 25 the money was retained, spent, used by Mr. Wanner between 2000

1 and 2015, when we executed the search warrants.

2 The money laundering, I think, is laid out. There's
3 really no other factual basis other than the money that were
4 proceeds in this fraud were used to spend -- or to buy an item
11:36 5 that was over \$10,000.

6 THE COURT: So what is the government going to be
7 contending is the total amount of loss here?

8 MR. CHASE: Your Honor, it's going to be -- the area,
9 the category is between 2.5 and -- I believe it's either 7 or 9
11:36 10 million, but, Your Honor, we are -- we are going to be taking
11 the position it's going to be over 3 million of intended loss
12 in this case.

13 THE COURT: All right. Mr. Weikum, anything you wish
14 to add to the summary or any other facts that you feel you
11:37 15 would need to clarify or explain, or --

16 MR. WEIKUM: Yeah, the majority of the facts -- for
17 clarification purposes, there were legitimate investments and
18 illegitimate investments running side by side, and so that
19 was -- and at sentencing we can kind of explain a little bit
11:37 20 more regarding the gambling, but other than that, the factual
21 basis is supported.

22 THE COURT: All right. Mr. Wanner, anything more you
23 wish to say or add or clarify or explain about what --

24 THE DEFENDANT: No.

11:37 25 THE COURT: -- what's alleged in -- or what's set

1 forth as facts in paragraph 6?

2 THE DEFENDANT: No.

3 THE COURT: All right. Do you have any questions at
4 all about the charges brought against you in federal court?

11:37 5 THE DEFENDANT: No, sir.

6 THE COURT: Okay. So I'm simply going to ask you how
7 you intend to plead to these two charges. I can read the
8 charges to you -- to you in their entirety or simply summarize
9 them and ask how you intend to plead, but --

11:38 10 MR. WEIKUM: We'd request that you summarize.

11 THE COURT: All right. You're comfortable with a
12 summary, sir?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. You've been charged in
11:38 15 Count 1 of the Indictment in federal court with a crime that's
16 entitled mail fraud. As to Count 1, how do you intend to plead
17 this morning, sir, guilty or not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: You've been charged in Count 2 with money
11:38 20 laundering. As to Count 2, how do you intend to plead this
21 morning?

22 THE DEFENDANT: Guilty.

23 THE COURT: The Court accepts your pleas of guilty to
24 Counts 1 and 2. I find, Mr. Wanner, that you are a competent
11:38 25 man who understands what he's been charged with in federal

1 court and what the consequences are for pleading guilty to
2 these charges. I find that you've entered knowing and
3 voluntary pleas. I also find there are sufficient facts that
4 you have agreed to in paragraph 6 of the Plea Agreement that
5 support finding you guilty of these offenses, so in accordance
6 with Rule 11, I accept your pleas of guilty this morning.

7 what happens next in all criminal cases in federal
8 court is that after a defendant has been -- pled guilty or
9 found guilty by a jury, before sentencing occurs, we have a
10 report prepared called a presentence investigation report.
11 It's done in every case. It's primarily used for sentencing
12 purposes, and it's a report prepared by a federal probation
13 officer.

14 The officer in this case is Carly Dalbey. She's from
15 Fargo. She's a federal probation officer there, and she will
16 need to interview you, and she'll likely set that up within the
17 next two to three weeks, I would guess. She will get in touch
18 with Mr. Weikum and coordinate that interview and setting it up
19 through him because your attorney has a right to be there.

20 These are not police interrogations or anything even
21 close to it. The purpose of the interview is really to gather
22 background, factual information from you, because included in
23 the report is information about your background, your family,
24 education, work experience, criminal history, etcetera. She
25 will probably contact your wife by phone as well to confirm

1 certain of that information.

2 And also included in the report is a lengthy
3 discussion about the sentencing guidelines. The probation
4 officer goes through the evidence, and she will calculate what
5 she believes is the appropriate sentencing guidelines.

6 And then the report is sent out to both attorneys,
7 and if -- and your attorney will get you a copy of the report
8 probably within about two months. And everybody is given a
9 chance to read that report over to make sure that it's
10 accurate, so please read it over carefully. You can have your
11 wife read it as well.

12 If you notice any errors in the report, it's
13 important that you let Mr. Weikum know what you think is wrong
14 in the report, and he'll follow up and contact the probation
15 officer that wrote it. We want these reports to be accurate,
16 so we give everybody a chance to look it over. And I don't see
17 those reports until long after you've seen it. I see it after
18 it's been finalized.

19 But included, as I mentioned, in the report is the
20 sentencing guideline calculations. And if the attorneys
21 disagree with those preliminary calculations, there's an
22 opportunity under the rules for them to voice those objections
23 and present their arguments to the probation officer that wrote
24 the report about what they believe should be the sentencing
25 guidelines that apply.

1 If there's still a disagreement about the guidelines
2 after that report has been sent out to everybody, that's when
3 we'll have a hearing, if need be, to listen to witnesses.
4 Ultimately if there's some dispute about the sentencing
5 guidelines, I'm left with the responsibility of hearing
6 evidence and making a factual finding as to what I believe are
7 the appropriate guidelines.

8 The sentencing hearing in this case is scheduled for
9 Monday, June 18th, at 11 o'clock. There's probably going to be
10 a need for more time than an hour, but I guess I'll leave it up
11 to counsel to let me know about that.

12 And my office will reach out to both attorneys here
13 and look at scheduling a earlier sentencing hearing to address
14 guideline disputes, which would likely be sometime in early
15 May, I would guess. Any questions?

16 THE DEFENDANT: No, sir.

17 THE COURT: And at sentencing hearings in federal
18 court, everybody gets a chance to speak. Both attorneys are
19 given an opportunity to outline what their recommendations are.
20 I'm required to give you a chance to speak. I'm required to
21 give victims a chance to speak and anyone else that wishes to
22 state anything for the record as to a sentence.

23 I always encourage defendants to submit letters of
24 support from people that know them well. I read those letters
25 carefully. Letters to judges usually tell me more about the

1 person that I'm -- have the responsibility to sentence than
2 what I'm going to read in a presentence investigation report,
3 so I encourage you to think about letters. Visit with
4 Mr. Weikum about that. He's been around a long time. He knows
5 what kind of information judges are interested in hearing.

6 And information that I look at carefully is -- in
7 letters is information about your character and your work ethic
8 and your -- what kind of a father you've been, what kind of a
9 spouse that you've been. I'm not going to read those things in
10 a presentence investigation report. And I appreciate knowing
11 something more about your background than the cold, hard facts
12 that I'm going to read in a report.

13 So if you do intend to submit any letters, all that I
14 ask from anyone is that they get those to their attorney at
15 least a week or two before any sentencing hearing so that the
16 letters can get properly filed and I have a chance to read
17 them. I usually read those letters over a couple of times.

18 But almost every week it seems like some defendant
19 comes to a sentencing hearing, and even though I've told them
20 to get letters filed beforehand, they'll come with a stack of
21 letters, and they want me to read them before sentencing. And
22 I'll take the time to read them, but it's not very fair to me,
23 nor is it fair to that defendant that I'm left in a position of
24 scurrying through and reading a bunch of letters of support
25 five minutes before a sentencing hearing. I'll take the time

1 to read them, but I would prefer to have some time to also
2 think about them.

3 Any questions or concerns?

4 THE DEFENDANT: No.

11:45

5 THE COURT: Anything else that I've overlooked here
6 counsel?

7 MR. CHASE: No, Your Honor.

8 MR. WEIKUM: No, Your Honor.

11:45

9 THE COURT: All right. Thank you, and we will stand
10 adjourned.

11 (Proceedings concluded at 11:45 a.m., the same day.)

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CERTIFICATE OF COURT REPORTER

I, Sandra E. Ehrmantraut, a Certified Realtime Reporter,

DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages contain an accurate transcript of my shorthand notes then and there taken.

Dated: September 6, 2019

/s/ Sandra E. Ehrmantraut
Certified Realtime Reporter